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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY NGUYEN,

Defendant and Appellant.

B236445

(Los Angeles County
Super. Ct. No. LA055661)

APPEAL from orders of the Superior Court of Los Angeles County, Martin L. Herscovitz, Judge. Affirmed.

A. William Bartz, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On December 16, 2008, a jury found Anthony Nguyen (Nguyen) guilty of willful, deliberate, premeditated, attempted murder (Pen. Code, §§ 664/187, subd. (a)),¹ during the commission of which he inflicted great bodily injury (§ 12022.7, subd. (a)) by using a deadly and dangerous weapon, to wit, a knife (§ 12022, subd. (b)(1)) (Count 1), and assault with a deadly weapon, a garden hoe (§ 245, subd. (a)(1)) (Count 2). Nguyen filed a timely notice of appeal. We affirmed. Nguyen then filed several post-judgment motions pursuant to section 1237, subdivision (b).² We find the motions to be without merit and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

A jury found Nguyen guilty of assaulting Jessica Quach (Quach) with a deadly weapon, a garden hoe, and willfully, deliberately and with premeditation and malice aforethought, attempting to murder Quach with a knife. During the altercation, Nguyen inflicted great bodily injury on Quach.

2. Procedural history.

In an information filed August 10, 2007, it was alleged that on or about May 1, 2007, Nguyen and a codefendant, Alex Alejandro Torres, willfully, deliberately and with premeditation used a deadly and dangerous weapon, a knife, to attempt to murder Quach and that, during the attempted murder, Nguyen inflicted great bodily injury on Quach (Count 1). It was further alleged that, on that same day, Nguyen used a deadly and dangerous weapon, a garden hoe, to willfully and unlawfully assault Quach (Count 2).

Trial was by jury. At 11:46 a.m. on December 16, 2008, the jury returned with the following verdict: “We, the jury in the above-entitled action, find the defendant, Anthony Nguyen, guilty, of attempted murder, in violation of . . . section[s] 664/187[,

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Nguyen claims his contentions are made pursuant to section 1237. That section provides: “An appeal may be taken by the defendant: [¶] . . . [¶] (b) From any order made *after judgment*, affecting the substantial rights of the party.” (Italics added.)

subdivision] (a), as charged in Count 1 of the information. [¶] We further find the allegation that the attempted murder was committed willfully, deliberately and with premeditation within the meaning of . . . section 664[, subdivision] (a), to be: True. [¶] We further find the allegation that the defendant personally used a deadly and dangerous weapon, to wit, a knife, within the meaning of . . . section 12022[, subdivision] (b)(1), to be: True. [¶] We further find the allegation that the defendant personally inflicted great bodily injury upon . . . Quach, within the meaning of . . . section 12022.7[, subdivision] (a), to be true.” With regard to Count 2, the allegation Nguyen committed assault with a deadly weapon, a garden hoe, in violation of section 245, subdivision (a)(1), the jury found Nguyen “guilty.”

Nguyen was sentenced on March 11, 2009. He waived arraignment for judgment and stated that there was no legal cause why sentence should not be pronounced. The trial court then, after reading the probation officer’s report and letters submitted by Nguyen, ordered probation denied and Nguyen sentenced to life in prison for the finding he attempted to murder Quach as alleged in Count 1. In addition, Nguyen was sentenced to a consecutive term of one year for his use of a knife during the offense and a consecutive term of three years for personally inflicting great bodily injury. The trial court ordered the sentence imposed for Count 2, assault with a deadly weapon, a garden hoe, stayed pursuant to section 654.³

Nguyen was awarded presentence custody credit for 681 days actually served and 102 days of good time/work time, for a total of 783 days. He was ordered to pay a \$7,500 restitution fine (§ 1202.4, subd. (b)), a stayed \$7,500 parole revocation restitution fine (§ 1202.45), a \$40 court security fee (§ 1465.8, subd. (a)(1)), a \$60 criminal conviction assessment (Gov. Code, § 70373) and restitution to the victim in the amount of \$1,426.60, plus 10 percent interest (§ 1202.4, subd. (f)).

³ Section 654, subdivision (a), provides in relevant part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

On March 11, 2009, Nguyen filed a notice of appeal in the trial court.

CONTENTIONS

After examination of the record, on February 6, 2012, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed February 17, 2012, the clerk of this court advised Nguyen to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. In March 2012, Nguyen filed several documents, deeming them post-judgment motions authorized by section 1237, subdivision (b).

On March 5, 2012, Nguyen filed a “Motion for Supplementation” in which he indicated he had been denied due process of law because he had not been notified that his former codefendant, Alex Alejandro Torres, would be testifying at his trial. He asserted this lack of notice denied him of a “fair [and] proper defense.” Nguyen then addressed the fees and fines owed and indicated that he “believe[d] that the United States may have gone bankrupt in 1933.” Accordingly, “quasi-monetary fines [and] the likes” violated previously enacted laws and regulations. At proceedings held on August 18, 2011, the trial court rejected Nguyen’s assertions and denied his motions.

In a supplemental brief filed on March 19, 2012, Nguyen indicated that, “[a]lthough [his] direct appeal [was] over,” he believed the court should consider additional potentially dispositive issues. Initially, the public defender had “rushed” him into making certain admissions. Then, his former codefendant, Torres, intimidated him into admitting “ownership of the negative-fingerprint knife.” Nguyen believed that Torres’s confession, in which Nguyen was implicated as a participant in the offense, was “unverified” and “invalid.” Nguyen questioned the authenticity of the confession because he had a “defective recollection” of some events and he never received a copy of photographs presented at trial as People’s exhibit 20, which he claims had the “capacity

to drastically reduce [his] sentenc[e] due to . . . [section] 1187.”⁴ They would have provided exculpatory evidence.

Nguyen explained that his “motion [was being] made on the ground that the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution require that an indigent defendant be provided with a free transcript of a prior proceeding when the transcript is needed for an effective defense[.]” Here, it was necessary to expose perjury on the part of the prosecution’s witnesses. Nguyen claims that, with regard to Torres, it is “out-of-place for [an] individual to confess to a crime that they . . . are sharing criminal charges with.” When Nguyen moved to “suppress or expunge or strike [from] the record [Torres’s] confession,” the victim’s testimony and Nguyen’s sister’s testimony, the trial court properly denied the motions in an order filed on August 18, 2011.

In a second supplemental brief, filed on March 19, 2012, Nguyen indicated that, as to his trial counsel, he “detected [the public defender’s] lack of interest [and] passion in representing him.” In addition, the trial court had acted improperly. Both the public defender and the trial court’s actions favored the prosecutor’s case. For example, the trial court had the prosecution’s primary witness transported to the court. The trial court then would not allow Nguyen to properly cross-examine the witnesses and “blatantly treated [a]ppellant as a non-innocent person.” Moreover, given that even his sister would not testify in his favor because she did not wish to “cross paths with her ex-boyfriend,” Nguyen was denied a fair trial.

Nguyen moved on to address the topic of jury selection. He asserted that, when the trial court asked if the defense found the panel of jurors selected acceptable, his counsel answered in the affirmative while he, personally, objected. The jury was comprised of Caucasians and Hispanics and two elderly female Asians. Nguyen claimed he was entitled to be tried by “a jury of his choosing” and he was denied that right.

⁴ Section 1187 provides in relevant part: “The effect of an order arresting judgment, in a felony case, is to place the defendant in the same situation in which the defendant was immediately before the indictment was found or information filed.”

Finally, Nguyen asserted that copies of the People's exhibit 20, photographs admitted at his trial, were never provided to him. The photographs showed injuries markedly different from those testified to and Nguyen believed that the photographs had been altered. In particular, one made it appear as though his living quarters were very messy and that he is a "slob" when, in fact, he is quite neat. Nguyen believed that, had he been able to see the photographs and to conduct cross-examination with regard to their contents, the jurors would have determined that Quach, Torres and Nguyen's sister, Brythe, had all committed perjury.

In a second motion filed on March 19, 2012, Nguyen "amended" his previous motion to assert that both his counsel and former codefendant, Torres, attempted to intimidate him into entering a plea. Then, as to Torres's plea, Nguyen argued that it had been invalid. Nguyen indicated that Torres's plea was "unverified" and not authentic and, therefore, failed to support his reference to Nguyen's role in the offenses. However, based on the record before us, Nguyen's motion was properly denied. There is nothing in the clerk's transcript to indicate that Torres's plea was somehow improper.

In the same motion, Nguyen again asserted he was not provided with an adequate record from which he could craft his motions. In particular, he did not receive the photographs which had been designated as People's Exhibit No. 20. He claimed that, without the photographs, he could not complete a "Motion for Modification of Sentence." Nguyen, however, does not make it clear how the photographs would have affected his sentence.

It must be noted that none of Nguyen's motions, arguments or contentions pertain to post-trial issues. They all refer to rulings initially made by the court during trial. In addition, none of Nguyen's contentions are corroborated by independent, objective evidence. They consist of assertions for which there is no genuine support in the record. (*In re Alvernaz* (1992) 2 Cal.4th 924, 938, 945.)

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.